

## MEMORANDUM OF UNDERSTANDING AND ASSESSMENT OF CIVIL PENALTY

A. The State of Alabama, by the authority of Attorney General Steve Marshall, notified the City of Mobile, Alabama (hereinafter “the City”) of its intent to file a complaint alleging that the City has violated the Alabama Memorial Preservation Act of 2017, § 41-9-230 et seq., Code of Alabama, 1975 (hereinafter “the Act”). The Act provides that “[n]o architecturally significant building, memorial building, memorial street, or monument which is located on public property and has been so situated for 40 or more years may be relocated, removed, altered, renamed, or otherwise disturbed.” Ala. Code § 41-9-232(a). The Act further provides that “[i]f the Attorney General determines that an entity exercising control of public property has . . . relocated, removed, altered, renamed, or otherwise disturbed” a “monument from that public property without first obtaining a waiver from the committee as requested by this act . . . the entity shall be fined twenty-five thousand dollars (\$25,000) for each violation. The fine shall be collected by the Attorney General, forwarded by his or office to the State Treasurer, and deposited into the Alabama State Historic Preservation Fund.” Ala. Code § 41-9-235(a)(2)d. After a request for more information regarding the City’s removal of a monument on June 5, 2020, the Attorney General notified the City of his determination that it had committed a violation of the Act as follows:

The City removed or relocated a statue of Admiral Raphael Semmes that had been situated on public property for 40 or more years in violation of Alabama Code § 41-9-232(a). The statue was a “monument” within the meaning of Alabama Code § 41-9-231(6). While Alabama Code § 41-9-233 allows a governmental entity to take “proper and appropriate measures . . . for the protection, preservation, care, repair, or restoration of” monuments, that section does not allow a monument to be removed or relocated. Alabama Code § 41-9-235(a)(2)b. permits a governmental entity to “temporarily relocate” a monument only if “there is a need for emergency repairs or construction at the site of” the monument—a condition that was not present here. Therefore, the Attorney General has determined that the City “removed” or “relocated” a protected monument in violation of Alabama Code § 42-9-232(a).

B. The Attorney General has determined that the City is “an entity exercising control of public property” on which the architecturally significant building, memorial building, memorial street, or monument at issue was located within the meaning of § 41-9-235(a)(2)d.

C. The State of Alabama, by the authority of Attorney General Steve Marshall, and the City have consented to the signing of this Memorandum of Understanding without the filing of a lawsuit by the State of Alabama and without adjudication of any of the factual or legal issues raised by the Attorney General’s determination that the City violated the Act.

D. NOW THEREFORE, without admission by the City of any issue of law or fact pertaining to the Attorney General’s determination that it violated the Act other than of the Attorney General’s jurisdiction to enforce the Act, and in order to avoid the time and expense of litigation, the parties to this Memorandum of Understanding consent to and agree upon the following:

#### **I. CIVIL PENALTY**

E. The City is assessed and agrees to pay a civil penalty in the amount of \$25,000 to the Office of the Alabama Attorney General to be disbursed to the Alabama State Historic Preservation Fund pursuant to § 41-9-235(a)(2)d. The City shall submit this payment by certified check within thirty (30) days of the signing of this agreement to the following address:

ADMINISTRATIVE SERVICES DIVISION  
OFFICE OF ATTORNEY GENERAL  
501 WASHINGTON AVENUE  
MONTGOMERY, AL 36130-0152

#### **II. NON-FILING OF SUIT**

F. The State of Alabama, by the authority of Attorney General Steve Marshall, agrees, based upon the City’s agreement to pay the civil penalty assessed in Paragraph E., to forego filing

suit against the City and any of its officers, directors, employees, agents, servants, successors, and assigns, and against any persons, firms, and corporations in active concert or participation with the City for any alleged violation of the Act arising out of or related to the description in Paragraph A.<sup>1</sup>

G. The parties reserve any and all legal and equitable remedies available to enforce the provisions of this Memorandum of Understanding.

H. The State of Alabama reserves the right to elect to file a civil action for statutory penalties against the City for any violations of the Act by the City discovered after the Date of Entry of this Memorandum of Understanding concerning different violations than these set forth herein.

I. This Memorandum of Understanding was negotiated, mutually drafted, and executed by the parties in good faith to avoid litigation of claims that are contested, denied, and disputed. The execution of this Memorandum of Understanding is not an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Memorandum of Understanding. Accordingly, this Memorandum of Understanding shall not be admissible in any judicial or administrative proceeding for use against any party over the objection of that party.

### **III. SEVERABILITY**

J. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

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<sup>1</sup> The Attorney General's agreement to forego filing suit includes a waiver of any suit for the future removal of the base on which the Raphael Semmes statue stood. The base of the statue is an integral part of the same "monument" as defined by Ala. Code § 41-9-232(6), and therefore its removal does not constitute a separate violation in addition to the one alleged in Paragraph A.



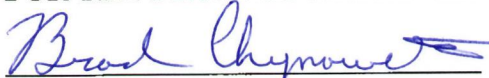
#### IV. MODIFICATION

K. This Memorandum of Understanding contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of this Memorandum of Understanding shall not be used in any action involving the interpretation or enforcement of this Memorandum of Understanding. This Memorandum of Understanding may not be amended or modified except by a written order of a court of competent jurisdiction. Any modifications of this Memorandum of Understanding by the parties shall be agreed to in writing by the parties before it will be deemed effective.

#### V. SIGNATORIES

L. The Assistant Attorney General on behalf of the State of Alabama, and the signatories for the City certify that they are fully authorized to enter into the terms and conditions of this Memorandum of Understanding and to execute and legally bind such parties to this document.

**FOR THE STATE OF ALABAMA:**

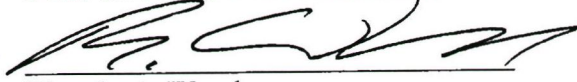


Brad A. Chynoweth  
Assistant Attorney General

Office of the Attorney General  
501 Washington Street  
Montgomery, AL 36130  
(334) 272-7300

Date: 6-15-20

**FOR THE CITY OF MOBILE:**



Ricardo A. Woods  
City Attorney

205 Government Street  
Mobile, Alabama 36602  
(251) 208-7800

Date: 6-15-20